

## PATENT COOPERATION TREATY

## PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 15 DEC 2005  
WIPO PCT

Applicant's or agent's file reference	<b>FOR FURTHER ACTION</b>	
	See Form PCT/PEA/416	
International application No. PCT/EP2004/005968	International filing date (day/month/year) 02.06.2004	Priority date (day/month/year) 12.06.2003
International Patent Classification (IPC) or national classification and IPC A23L3/3418, A23N15/00, A01F25/00, A23B7/148		
Applicant UNILEVER PLC et al.		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:
  - a.  *(sent to the applicant and to the International Bureau)* a total of sheets, as follows:
    - sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
    - sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
  - b.  *(sent to the International Bureau only)* a total of (Indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

Date of submission of the demand 06.10.2004	Date of completion of this report 14.12.2005
Name and mailing address of the International preliminary examining authority: European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Gaiser, M Telephone No. +49 89 2399- 

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**Box No. I Basis of the report**

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
    - international search (under Rules 12.3 and 23.1(b))
    - publication of the international application (under Rule 12.4)
    - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

**Description, Pages**

1-15 as originally filed

**Claims, Numbers**

1-18 as originally filed

**Drawings, Sheets**

1/7-7/7 as originally filed

a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

- The amendments have resulted in the cancellation of:
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):
- This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes: Claims	1-18
	No: Claims	
Inventive step (IS)	Yes: Claims	1-18
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-18
	No: Claims	

**2. Citations and explanations (Rule 70.7):**

**see separate sheet**

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**Box No. VII Certain defects in the international application**

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The following defects in the form or contents of the international application have been noted:

**see separate sheet**

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**Re Item V.**

- 1 The following documents are referred to in this communication:  
D1 : GB 1 132 151 A (BEST FERTILIZERS CO) 30 October 1968 (1968-10-30)  
D2 : EP 0 457 431 A (TRANSFRESH CORP) 21 November 1991 (1991-11-21)  
D3 : FR 1 324 204 A (VINSOT, JEAN G) 19 April 1963 (1963-04-19)
- 2 Document D1, which is considered to represent the most relevant state of the art, discloses a method for containing vegetable produce, e.g. peas, and its corresponding container. From this, the subject-matter of independent claims 1 and 13 differs in that D1 suggests to substantially lower the oxygen concentration in said container, while providing elevated levels of CO<sub>2</sub>. According to the present application, it is favourable to ensure an oxygen concentration of at least 15%, with a CO<sub>2</sub> concentration below 1%.
- 2.1 The subject-matter of claim 1 is therefore novel (Article 33(2) PCT)  
The problem to be solved by the present invention may be regarded as providing an alternative way to prevent peas from deteriorating during transport.
- 2.2 The solution to this problem proposed in claim 1 of the present application is considered as involving an inventive step (Article 33(3) PCT) since it has been accepted for a long time that the oxygen level has to be reduced substantially, when storing peas.  
D2, which discloses a transport container which allows an air intake in order to control the O<sub>2</sub> and CO<sub>2</sub> concentrations in a transport box does not disclose any minimum O<sub>2</sub> level that has to be maintained. D3, while teaching the exposure of favourable cola nuts, and possibly peas as well, to controlled amounts of O<sub>2</sub>, prescribes controlling the CO<sub>2</sub> concentration at a level below 7%.  
Therefore, neither the teachings of D2, nor the teachings of D3 would provide sufficient information to the man skilled in the art to alter method or apparatus of D1 according to the features of the invention.
- 2.3 Claims 2-12 are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.
- 2.4 Claims 14-18 are dependent on claim 13 and as such also meet the requirements

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of the PCT with respect to novelty and inventive step.

**Re Item VII.**

Present claim 18 depends on itself. For assessing claim 18 with respect to the requirements of Article 33 PCT, as stated above, it has been assumed that claim 18 depends on claim 17.